

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

**UNITED STATES OF AMERICA  
for the use and benefit of  
MALLORY ELECTRIC CO.**

**Plaintiff,**

**vs.**

**CIVIL ACTION NO.:**

**ACC CONSTRUCTION, CO., INC.**

**Serve: 635 NW Frontage Road, Suite A  
Augusta, GA 30907-3679**

**Service Through Secretary of the Commonwealth of Virginia**

**LIBERY MUTUAL INSURANCE COMPANY**

**Serve: Corporation Service Company  
100 Shockoe Slip Fl 2  
Richmond, VA 23219**

**Defendants.**

**COMPLAINT**

Plaintiff, the United States of America, for the use and benefit of Mallory Electric Co. (hereafter “MEC”) states its Complaint as follows:

1. This Court has jurisdiction over this matter pursuant to the Miller Act, Title 40, U. S. C. § 3131, et seq.
2. MEC is a corporation incorporated under the laws of the Commonwealth of Virginia having its main place of business in the City of Newport News, Virginia.

3. ACC Construction Co., Inc. (hereafter “ACC”) is a corporation with its principal place of business in Augusta, GA.

4. Liberty Mutual Insurance Company (hereafter “LIBERTY”) is a compensated corporate surety authorized to conduct business in the Commonwealth of Virginia.

5. The United States of America through the U.S. Army Corps of Engineers, entered into a Contract with ACC Construction Co., Inc. (hereafter “ACC”) for ACC to provide certain improvements to property on the project known as Design and Construction of Equipment Concentration Site (ECS) Modified Tactical Equipment Maintenance Facility (TEMF) and General Purpose Warehouse, Fort A.P. Hill, Virginia, (Contract No. W912QR-17-C-0021) (hereafter the “Project”).

6. ACC, as principal and LIBERTY, as surety, provided a Standard Form 25A Payment Bond for the Project binding ACC as principal, and LIBERTY, as surety, to make prompt payment to all persons supplying labor and material in the prosecution of the work provided for on the Project (hereafter the “Payment Bond”). A true and accurate copy of the Payment Bond is attached hereto as Exhibit A and incorporated herein.

7. Thereafter, ACC entered into a Subcontract with MEC to provide labor, equipment, and materials to accomplish electrical work pursuant to the requirements of the Project (hereafter the “Subcontract”).

8. MEC has completed its Subcontract work, with changes thereto and is owed by ACC a Subcontract balance for labor, equipment and materials supplied by it on the Project in the amount of \$390,792.81 plus pre and post judgment interest and all costs

of collection. Despite repeated demand, ACC had failed and refused to pay this Subcontract balance to MEC.

9. ACC's failure to pay MEC the Subcontract balance for labor, equipment and materials supplied by MEC to the Project is a breach of the Subcontract with MEC which is damaged and continues to damage MEC in the amount of \$390,792.81 plus pre and post judgment interest thereon and costs herein.

10. LIBERTY, as surety, and ACC are jointly and severally liable and responsible on their Payment Bond, for payment of the \$390,792.81 owed and unpaid by ACC to MEC for labor, material and equipment furnished by MEC in prosecution of its Subcontract work on the Project. Therefore, LIBERTY and ACC are in violation of their good faith obligations under the Payment Bond in failing to pay MEC the amounts owed on the Project and are liable to MEC for all additional costs and fees in this matter.

11. This suit is filed less than one (1) year, but more than ninety (90) days from the last date on which MEC last furnished labor, equipment, or materials to the Project.

12. MEC entered into the Subcontract with ACC in the Commonwealth of Virginia and performed material portions of the work required by the subcontract at Fort A.P. Hill, Virginia, which is within the venue limits of the United States District Court for the Eastern District of Virginia, Richmond Division.

WHEREFORE, the United States of America, for the use and benefit of Mallory Electric Co., demands judgment from ACC Construction Co., Inc. and Liberty Mutual Insurance Company, jointly and severally, in the amount of \$390,792.81, plus pre and

post judgment interest from November 1, 2020 and all costs and expenses incurred herein.

UNITED STATES OF AMERICA  
for the use and benefit of  
MALLORY ELECTRIC CO.

By: /s/ David A. Hearne  
Of Counsel

David A. Hearne, Esq. (VSB #28674)  
ReavesColey PLLC  
555 Belair Ave., Ste. 300  
Chesapeake, VA 23320  
Phone: (757) 410-8066  
Fax: (757) 410-8258  
david.hearne@reavescoley.com